

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MUSTAFA-EL K.A. AJALA,
formerly known as DENNIS E. JONES-EL,

Plaintiff,

v.

CRAIG TOM and MATTHEW SCULLION,

Defendants.

ORDER

13-cv-102-bbc

In this prisoner civil rights case, plaintiff Mustafa-El Ajala is suing defendants Craig Tom and Matthew Scullion for failing to adjust his restraints when plaintiff complained that they were too tight, in violation of the Eighth Amendment. The case is on remand after the Court of Appeals for the Seventh Circuit reversed this court's determination that defendants were entitled to qualified immunity. Ajala v. Tom, No. 15-3101, 2016 WL 3964097 (7th Cir. July 22, 2016). Magistrate Judge Stephen Crocker has set a new schedule for the remainder of the case, including a December 5, 2016 trial date.

Plaintiff has filed a motion in which he asks the court to grant the motion for summary judgment that he filed before the appeal. Dkt. #149. However, I denied plaintiff's summary judgment motion at the same time that I granted defendants' motion. Dkt. #128. If plaintiff believed that he was entitled to summary judgment, he should have

presented that argument to the court of appeals. It is too late to seek reconsideration now. Schering Corp. v. Illinois Antibiotics Co., 89 F.3d 357, 358 (7th Cir. 1996) ("Under the doctrine of the law of the case, a ruling by the trial court, in an earlier stage of the case, that could have been but was not challenged on appeal is binding in subsequent stages of the case.").

In their response to plaintiff's motion, defendants take a bewildering position. Seeming to miss the point of plaintiff's motion, defendants say that they have no objection to the court reconsidering the parties' summary judgment motions and they argue that they are entitled to summary judgment under a "deliberate indifference" standard. Dkt. #150. This argument is obviously inconsistent with the decision of the court of appeals, which held that defendants were not entitled to summary judgment if the facts were viewed in plaintiffs' favor.

The bottom line is that neither side is entitled to summary judgment. At the close of trial, if any party believes that no reasonable jury could render a verdict in favor his opponent, that party may file a motion for judgment as a matter of law under Fed. R. Civ. P. 50.

ORDER

IT IS ORDERED that the renewed motion for summary judgment filed by plaintiff

Mustafa-El Ajala, formerly known as Dennis Jones-El, dkt. #149, is DENIED.

Entered this 27th day of September, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge